

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LARRY CHERRY,)	
)	
Plaintiff,)	
)	
v.)	18-cv- 3326
)	
FIVE BROTHERS MORTGAGE COMPANY)	Judge Edmond E. Chang
SERVICES AND SECURING, INC.,)	
)	Magistrate Judge Maria Valdez
Defendant.)	

MOTION FOR SANCTIONS

NOW COMES the Defendant, FIVE BROTHERS MORTGAGE COMPANY SERVICES AND SECURING, INC., a Michigan corporation, by and through one of its attorneys, BRIAN J. ARMSTRONG of SCHIROTT, LUETKEHANS & GARNER, LLC, and moves this Honorable Court pursuant to Fed. R. Civ. P. 37(b)(2), Local Rule 37, and the Court's September 26, 2019 Order, for sanctions for Plaintiff's failure to comply with this Court's Mandatory Initial Discovery Order, and in support hereof, states as follows:

1. This case is subject to the Northern District of Illinois' Mandatory Initial Disclosure Project ("MIDP").

2. On September 26, 2019, this Court ordered the parties to make disclosures pursuant to the MIDP by November 12, 2019.

3. Plaintiff has failed to make any disclosures as required by the MIDP and the September 26, 2019 Order.

4. On December 4, 2019 in the early afternoon, the undersigned counsel for Defendant, Brian J. Armstrong, spoke by telephone with Plaintiff, Larry Cherry, and requested that Mr. Cherry tender MIDP disclosures as ordered by the Court. Additionally, Defendant's

counsel confirmed the conversation by email. A copy of counsel's email is attached hereto as Exhibit 1.

5. Notwithstanding the foregoing, as of the time of the filing of this motion, Plaintiff has failed to make any disclosures as required by MIDP and the Court's September 29, 2019 Order.

6. As the MIDP Standing Order and User Manual state, the disclosures are mandatory. The purpose and intent of MIDP is wholly defeated if parties are forced to move to compel compliance with MIDP.

7. Plaintiff's *pro se* status does not excuse his failure to comply with the rules or the Court's orders; he is charged with knowing the rules and following the Court's orders. Moreover, a review of Northern District of Illinois' docket records reveals that Plaintiff is not a novice litigator in this Court and, therefore, is even more familiar with the applicable rules and requirements than a typical *pro se* Plaintiff.

8. As a sanction for Plaintiff's failure to comply with MIDP and this Court's September 26, 2019 Order, this Court should dismiss this case with prejudice. Alternatively, the Court should bar Plaintiff from offering evidence in opposition to any case-dispositive motion Defendant may file and at trial in this matter. Additionally, the Court should award Defendant its attorney's fees and costs in bringing this Motion and seeking Plaintiff's compliance with MIDP and the Court's September 29, 2019 Order.

WHEREFORE, Defendant, FIVE BROTHERS MORTGAGE COMPANY SERVICES AND SECURING, INC., prays this Honorable Court dismiss this case with prejudice; alternatively, the Court should bar Plaintiff from offering evidence in opposition to any case-dispositive motion and at trial in this matter. Additionally, the Court should award Defendant its attorney's fees and costs in bringing this Motion and seeking Plaintiff's compliance with MIDP and the Court's September 29, 2019 Order, and provide any other relief this Court deems just and equitable.

/s/ Brian J. Armstrong

One of Defendant's Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of December, 2019, I electronically filed the foregoing Defendant's Motion to Dismiss with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Larry Cherry
larrycherry22@gmail.com

and I certify that I have mailed via the United States Postal Service the document to the following non-CM/ECF participants:

None.

/s/ Brian J. Armstrong

Brian J. Armstrong, One of Defendant's Attorneys

EXHIBIT 1

Brian Armstrong

From: larry cherry <larrycherry22@gmail.com>
Sent: Wednesday, December 4, 2019 2:30 PM
To: Brian Armstrong
Subject: Re: Settlement

Received, Thank you for taking time to take the call.

Larry Cherry

Lets keep our frequency high!!!

On Wed, Dec 4, 2019 at 2:07 PM Brian Armstrong <bja@lbgalaw.com> wrote:

Mr. Cherry,

As we discussed today, you will propose revisions to the release I sent you Monday and email to me. I look forward to receiving your proposed revisions.

Additionally, as we discussed, your Mandatory Initial Disclosures are past due. Please provide your disclosures within 7 days so that we may avoid court involvement regarding your mandatory disclosures.

Brian

Brian J. Armstrong

bja@lbgalaw.com

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